IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3665 of 1999

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRINCIPAL

Versus

SURESHBHAI N BHATT

Appearance:

MR NALIN K THAKKER for Petitioner No. 1-3

MR AD OZA for Respondent No. 1

MR PRADIP BHATE A.G.P. for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 29/07/2004

ORAL JUDGEMENT

1.1 The petitioners by way of this petition have challenged the judgment dated 19th March, 1999 passed by the Gujarat Affiliated Colleges Services Tribunal [hereinafter referred to as "the Tribunal"] in

Application No. 102 of 1989 whereby, the Tribunal has directed the present petitioners to pay the salary with all consequential benefits for the period from 1-8-1986 to 13-8-1989 within a period of two months.

2.1 The short facts of the case are that respondent no. 1 was appointed as lecturer in combined Commerce & Arts College w.e.f 15th June, 1971 and he continued as such after the separation of the Arts faculty in the year 1976. Thereafter the respondent was transferred inter se vide order dated 28th July, 1986 and was he was relieved from duty on 31st July, 1986. The case of the petitioners is that respondent no. 1 challenged the said transfer order before this Court by filing Special Civil Application No. 3852 of 1986 and this Court in the meantime stayed the transfer order. The petitioners further stated that this Court finally disposed of the said application and transferred the same to the Tribunal for further proceedings in accordance with law. The petitioners further submitted that the Tribunal rejected the Application No. 104 of 1988 vide judgment dated 4th August, 1989. The petitioners contended that the respondent no.1 was relieved from Commerce College on 31st July 1986 and there was no question of allowing him to resume duty at commerce college and therefore he remained absent from 1st August, 1986 to 13th August, 1989. According to the petitioners, the Tribunal ought not to have granted the application with the aforesaid directions. Hence, this petition.

3.1 Heard the learned counsel for the respective parties. Learned counsel for the petitioners submitted that the respondent no.1 did not work at any place from 1st August 1986 to 15th October 1986 and therefore he is not entitled for any salary for the said period.

4.1 Learned counsel for the petitioners has emphasised on the point that the stay order granted earlier was limited upto 11th August 1986 and it was never extended. However, the finding of the Tribunal on this point is to the effect that this Court had granted stay in favour of the respondent no.1 against the impugned order of transfer and finally this Court has transferred the matter to the Tribunal and upto that date date the stay was operating against the present petitioners. There is nothing on record to point out contrary to the said finding recorded by the Tribunal and this Hon'ble Court will not reappreciate the finding of facts recorded by the Tribunal. The case of the respondent no.1 that he had reported for duty, but the petitioners restrained him from signing the muster roll

was also not rebutted with evidentiary material. This is evident from the fact that the principal in his examination has admitted that he had not obeyed the order of this Court, meaning thereby he had not permitted the respondent no.1 to sign the muster roll. It is also clear that in view of the stay order of this Court, there was no question of the respondent no.1 resuming his duty at the Arts College.

4.2 I have carefully perused the impugned judgement of the Tribunal minutely. The Tribunal has recorded a clear finding of fact in para 8 which reads as under:

> "After hearing the respective parties, I have come to the conclusion that the applicant has joined the respondent college from 1971 and was transferred from Commerce College to Arts College which is run by the respondent no.3 Trust from 1-8-86 and against that order of the respondent no.3, the applicant has got stay from the Hon'ble High Court by way of preferring Special Civil Application No.3852/86 and because of the stay granted by the Hon'ble High Court, copy of which was served to the respondents, the applicant has not joined the duties in Arts College and has regularly attended the commerce college as he was protected by the stay granted by the Hon'ble High Court. So, it is not in question that the applicant had joined the respondent Arts College when the Tribunal had rejected the application of the applicant and the stay was dismissed which was granted by this Tribunal earlier. The applicant has joined the Arts College with immediate effect i.e. on 14-8-89. So, as per my view, the applicant is entitled to get the salary for the period from 1-8-86 to 13-8-89 with all consequential benefits and is entitled to get the salary considering the continued service."

In view of the aforesaid findings of the Tribunal, I do not find any merits in the present petition.

5.1 Apart from that, on going through the record of this petition, it is clear that while, admitting the matter, this Court [Coram : Miss R.M. Doshit, J.] vide order dated 24th December, 1992 refused the interim relief in view of the fact that the amount of arrears of salary has been paid to the petitioners pursuant to the impugned judgment and order dated 19th March, 1999 passed by the Tribunal, wherein the respondents were directed to pay the salary with all the consequential benefits for

the period from 1-8-86 to 13-8-89 within two months from the date of receipt of this order. In view of this the issue raised in this petition has become academic and no useful purpose would be served by proceeding with the same.

6.1 In view of the clear findings of the Tribunal, I do not find any merits in the present petition and the question raised in the petition also has become academic in view of the circumstances mentioned hereinabove. The petition is, therefore, dismissed. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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